



Insurance Company Professional Liability

Current Trends in Claims, Litigation and Placement

Presented By:
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*Hays Companies, Inc., an owned
subsidiary of Brown & Brown, Inc.*



Presentation Agenda



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Policy Placement Issues in the Marketplace

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Q&A

Panelists



Aaron Stone

Brown & Brown, Moderator



Stuart Turner

Brown & Brown, Panelist



Scott Stence

Brown & Brown, Panelist



Stacy Broman

Meagher & Geer, Panelist



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Claim Trends and Issues

Claim Trends and Issues

LEGAL REQUIREMENTS FOR CLAIMS

Common Law

- Varies by State
 - » Regulatory Limits on Claim-Handling
 - » Principles of Contract Interpretation
 - » Choice of Law
 - » Duties Imposed by State Law
- Breach of contract vs. Tort
 - » Improper or Incomplete Performance
 - » Failure to Perform with reasonable care and competence
- Benefits due under policy were withheld
- Reason for withholding was unreasonable

Statutory

- Unfair Claims Practices Acts
 - » Varies by State but generally similar
 - » Prohibited acts are per se violations



Claim Trends and Issues

COMMON TYPES OF CLAIMS

- **Bad Faith Claim Handling**
 - » Failure to Settle
 - » Wrongful Denial of Coverage



- » Other Acts of Bad Faith

- **Underwriting Errors**
 - » Misunderstandings
 - » Clerical Errors
 - » Failure to Disclose
 - » Missed Deadlines
- **Breach of Agency Relationships**
- **Financial Advice**
 - » Life Insurance
 - Suitability Issues
 - Sales and Marketing practices
- **Remedies**
 - » Statutory Penalties
 - » Punitive Damages
 - » Attorneys' Fees

Claim Trends and Issues



Common Practices that result in Claims

- Failure to settle
- Wrongful denial of coverage
- Beware of the bad faith setup- time limited demands

Common Practices to avoid Claims

- Maintain and document claim files
- Reasonable, prompt, investigations
- Adhere to contractual and regulatory timelines
- Proper and timely reservation of rights
- Communications

Claim Trends and Issues

- **Coverage Issues**
 - » Notice
 - » Defense
 - » Covered Loss/Allocation
- **Social inflation**
 - » Rising litigation costs
 - » Higher settlements and “nuclear” verdicts
 - » Longer claim resolution timeline
- **Jurisdictional issues**
- **Claim resolution issues**
- **Other issues**
 - » COVID-19
 - » EPL



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Litigation Environment

Litigation Environment

- Increased volume of Claims
 - » By Type of Claim?
 - Auto
 - » By Jurisdiction?
 - Traditional difficult jurisdictions
 - Emerging challenging jurisdictions
 - » Aggressive plaintiffs' bar
- Impact on settlements and verdicts
- Litigation funding



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Policy Placement Issues in the Marketplace

Placement Issues

- Carrier response to Claim Trends and Losses
 - » Impact on Premium
- Actions to reduce UW scrutiny and premium increases
- Terms and Conditions negotiations
- Other policy language issues
 - » Exclusions
 - » Limitations
- Challenges in building larger programs



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Questions and Answers





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